



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: SATEC Systems Inc.

File: B-259948

Date: May 1, 1995

DECISION

SATEC Systems Inc. protests the award of a contract to Applied Test Systems, Inc. (ATS) under invitation for bids No. 3-611748, issued by the National Aeronautics and Space Administration for mechanical creep testing machines. SATEC challenges the agency's failure to solicit the protester for the limited competition procurement.¹ SATEC contends that based upon descriptive literature submitted to the agency several months prior to the award, the agency should have known that the protester could supply the machines.²

We dismiss the protest as untimely.

The award to ATS was published in the Commerce Business Daily (CBD) on October 14. We have held that publication in the CBD constitutes constructive notice of a procurement. Metrox Inc., B-235618, Aug. 21, 1989, 89-2 CPD ¶ 161. Therefore, by virtue of the October 14 CBD notice, SATEC, is charged with knowledge on that date of the award. Pro-Tem, B-231087, Apr. 29, 1988, 88-1 CPD ¶ 427. Our Bid Protest Regulations require that a protest be filed not later than 10 working days after the basis of protest is known or should have been known, whichever is earlier. 4 C.F.R. § 21.2(a)(2) (1995). Our timeliness rules reflect the dual requirements of giving parties a fair opportunity to present their cases and resolving protests expeditiously without unduly disrupting or delaying the procurement process. Air Inc.--Request for Recon., B-238220.2, Jan. 29, 1990, 90-1 CPD ¶ 129. In order to prevent those rules from becoming meaningless, exceptions are strictly construed and rarely used. Id.

¹The agency limited the competition to two firms based upon its determination that there was an unusual and compelling urgency for the equipment.

²The agency reports that it found that the protester's descriptive literature did not demonstrate the ability to meet the agency's current needs.

SATEC initially protested to the agency on November 15 the failure to solicit the protester. SATEC subsequently filed a protest with our Office on January 10, 1995, after its December 29 receipt of the agency's decision denying the agency-level protest. SATEC's protest to the agency was untimely filed since it was filed more than 10 working days from the October 14 CBD notice of the award; the agency-level protest was also filed more than 10 working days after October 28, the date SATEC states it first acquired actual knowledge of the procurement and the award. Since its protest to the agency was untimely filed, the subsequent protest to our Office is untimely and not for our consideration. 4 C.F.R. § 21.2(a)(3).

SATEC contends that its protest should be considered timely because the CBD notice did not provide sufficient information concerning the contract awarded to ATS. SATEC states that it requested information from the agency on October 28 to confirm what was purchased in order to determine whether the agency was purchasing some unique type of mechanical creep testing equipment that SATEC may not be able to provide. According to the protester, since the agency failed to promptly provide the requested information, SATEC filed its agency-level protest on November 15 challenging the agency's failure to solicit the firm. The agency-level protest was based solely upon the information in the CBD notice (including the product description and the contract date, price, and awardee) and SATEC's knowledge of ATS' equipment since, as SATEC states in its protest, ATS is a major competitor of SATEC in the materials testing equipment industry. SATEC states that before it received the agency's decision denying its protest and the agency's January 6 response to the protester's November 1 Freedom of Information Act request, both of which SATEC contends indicate that it has a complying product, it did not have sufficient information to support the basis of its protest. We disagree.

The basis of SATEC's protest is that the agency improperly made an award to ATS based on limited competition since SATEC was not solicited for the procurement. SATEC, however, had constructive notice of the award on October 14 and actual notice of the award on October 28. Such notice advised SATEC that it had been excluded from the competition and provided the information necessary (i.e., product description, contract price, and identification of ATS, its major competitor for this type of equipment) for SATEC to file its agency-level protest; that protest, however, was

required to have been filed within 10 working days of the notice of the award.³

The protest is dismissed,


John Van Schaik
Acting Assistant General Counsel

³As to SATEC's contention that it chose not to protest until it could confirm with the agency that the equipment purchased from ATS was not unique and was in fact the type of equipment described in the CBD notice and available from SATEC, this decision by the protester to try to obtain additional information in support of its protest did not toll the timeliness requirements. As stated above, the CBD notice, as evidenced by the protester's November 15 agency-level protest, provided sufficient information for SATEC to form its protest; the protester has provided no basis for it to have reasonably believed that the item purchased was uniquely different from that described in the CBD notice or the type of equipment for which it regularly competes with ATS for the award of contracts.